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Paper No. 5

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OFFICE OF PETITIONS

In re Application of	:
Moon-Jung Ko	: DECISION DISMISSING
Application No. 09/853,102	: PETITION
Filed: 10 May, 2001	:
Atty's Docket No. 678-614(P97	:

This is a decision on the petition filed on 25 July, 2001, requesting that the above-identified application, including Figure 8 described in the specification, be accorded a filing date of 10 May, 2001.

The petition is **DISMISSED**.

On 10 May, 2001, the application was filed.

On 6 July, 2001, Initial Patent Examination Division mailed a Notice of Omitted Items in a Provisional Application stating that the application had been accorded a filing date of 10 May, 2001, but that Figure 8 described in the specification appeared to have been omitted.

In response, on 25 July, 2001, the present petition and a petition fee of \$130.00 were filed. Petitioners argue that Figure 8 was filed with the other application papers on 10 May, 2001, but was subsequently misplaced in the U.S. Patent and Trademark Office (Office). Petitioners state that a postcard receipt showing receipt of nine (9) sheets of drawings is enclosed.

A review of the official file reveals that a copy of petitioner's postcard receipt is not located among the papers filed on 25 July, 2001. The petition is therefore dismissed. Petitioner should file a renewed petition accompanied by the postcard

receipt and a copy of Figure 8 said to have been filed on 10 May, 2001, but subsequently lost in the U.S. Patent and Trademark Office.

Additionally, the declaration of Maureen Bitz filed with the present petition and attesting to the filing of Figure 8 with the other application papers filed on 10 May, 2001, by itself is not considered persuasive evidence that Figure 8 was in fact filed on 10 May, 2001. Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office.

A request for reconsideration (no further petition fee is required) must be filed within TWO MONTHS of the date of this decision in order to be considered timely.¹ **This two month period is not extendable under 37 CFR 1.136(a).** If a timely petition is not filed the original disclosure will include only those papers present in the PTO on the date of deposit.

The application will be retained in the Office of Petitions for a period of two (2) months to await petitioners' reply to this decision. If no renewed petition is timely filed, the application will be returned to the Office of Initial Patent Examination for further processing using only the papers present in the USPTO on the date of deposit.

Further correspondence with respect to this matter should be addressed as follows:

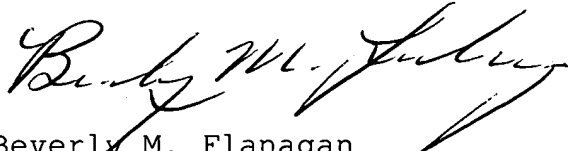
By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

By FAX: (703)308-6916
Attn: Office of Petitions

¹37 CFR 1.181(f).

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
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Telephone inquires should be directed to Petitions Attorney
Douglas I. Wood at 703.308.6918.

A handwritten signature in cursive script, appearing to read "Beverly M. Flanagan".

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy